

given or a deed to real property executed pursuant to section 6338 discharges the property from all liens, encumbrances, and titles over which the lien of the United States, with respect to which the levy was made, has priority. For example, a mortgage on real property executed after a notice of a Federal tax lien has been filed is extinguished when the district director executes a deed to the real property to a purchaser thereof at a sale pursuant to section 6335 following the seizure of the property by the United States. The proceeds of such a sale are distributed in accordance with priority of the liens, encumbrances, or titles. See section 6342(b) and the regulations thereunder for provisions relating to the distribution of surplus proceeds. See section 7426(a)(2) and the regulations thereunder for judicial procedures with respect to surplus proceeds.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7180, 37 FR 7320, Apr. 13, 1972]

**§ 301.6340-1 Records of sale.**

(a) *Requirement.* Each district director shall keep a record of all sales under section 6335 of real property situated within his district and of redemptions of such property. The records shall set forth (1) the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, the date of the deed, and, in the case of redemption of the property, (2) the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the district director shall be evidence in any court of the truth of the facts therein stated.

**§ 301.6341-1 Expense of levy and sale.**

The district director shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in con-

nection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the district director shall properly apportion the expenses to the real property (or to each tract).

**§ 301.6342-1 Application of proceeds of levy.**

(a) *Collection of liability.* Any money realized by proceedings under subchapter D, chapter 64, of the Code or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of the Internal Revenue Code), is applied in the manner specified in subparagraphs (1), (2), and (3) of this paragraph (a). Money realized by proceedings under subchapter D, chapter 64, of the Code includes money realized by seizure, by sale of seized property, or by surrender under section 6332 (except money realized by the imposition of a 50 percent penalty pursuant to section 6332(c)(2)).

(1) *Expense of levy and sale.* First, against the expenses of the proceedings or sale, including expenses allowable under section 6341 and amounts paid by the United States to redeem property.

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying subparagraph (1) of this paragraph (a), shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying subparagraphs (1) and (2) of this paragraph (a), shall then be applied against the liability in respect of which the levy was made or the sale of redeemed property was conducted.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the district director to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds

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unless another person establishes a superior claim thereto.

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### § 301.6343-1 Requirement to release levy and notice of release.

(a) *In general.* A district director, service center director, or compliance center director (*director*) must promptly release a levy upon all, or part of, property or rights to property levied upon and must promptly notify the person upon whom the levy was made of such a release, if the director determines that any of the conditions in paragraph (b) of this section (conditions requiring release) exist. The director must make a determination whether any of the conditions requiring release exist if a taxpayer submits a request for release of levy in accordance with paragraph (c) or (d) of this section; however, the director may make this determination based upon information received from a source other than the taxpayer. The director may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.

(b) *Conditions requiring release.* The director must release the levy upon all or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists—

(1) *Liability satisfied or unenforceable—*

(i) *General rule.* The liability for which the levy was made is satisfied or the period of limitations provided in section 6502 (and any period during which the period of limitations is suspended as provided by law) has lapsed. A levy is considered made on the date on which the notice of seizure provided in section 6335(a) is given. A levy that is made within the period of limitations provided in section 6502 does not become unenforceable simply because the person who receives the levy does not surrender the subject property within the period of limitations. In this case, the liability remains enforceable to the extent of the value of the levied upon property. However, a levy made outside the period of limitations (normally ten years without suspensions) must be released unless—

(A) The taxpayer agreed in writing to extend the period of limitations as provided in section 6502(a)(2) and § 301.6502-1; or

(B) A proceeding in court to collect the liability has begun within the period of limitations.

(ii) *Special situations.* A continuing levy on salary or wages made under section 6331(e) must be released at the end of the period of limitations in section 6502. However, a levy on a fixed and determinable right to payment which right includes payments to be made after the period of limitations expires does not become unenforceable upon the expiration of the period of limitations and will not be released under this condition unless the liability is satisfied.

(2) *Release will facilitate collection.* The release of the levy will facilitate collection of the liability. A director has the discretion to release the levy in all situations, including those where the proceeds from the sale will not fully satisfy the tax liabilities of the taxpayer, under terms and conditions as he or she determines are warranted.

(i) *Example.* The following example illustrates the provisions of this paragraph (b)(2):

*Example.* A and B each own machines which, when used together, produce widgets. A owes delinquent federal taxes. A notice of federal tax lien is properly filed against all property or rights to property belonging to A. A's machine is seized to satisfy A's delinquent tax liability. The fair market value of A's property is greater than the expenses of seizure and sale, but less than the amount of A's tax liability. A and B find a buyer who wants to buy both machines together. The buyer will only buy the machines together. A's property has a greater value as part of the package than it does by itself. The larger value, as shown in the sale contract, is enough to pay A's tax liability in full. In this situation a release of the levy will facilitate collection because the sale of both machines can be completed and A's liability will be paid in full at the settlement.

(ii) *Compliance with other conditions.* The director may find that collection will be facilitated by the taxpayer's compliance with conditions other than immediate payment, such as:

(A) The delinquent taxpayer delivers a satisfactory arrangement, which is accepted by the director, for placing